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VIA ELECTRONIC FILING

The Honorable Kenneth M. Karas
United States District Court
for the Southern District of New York
300 Quarropas Street, Room 521
White Plains, New York 10601

Re: Olympia Sports Company, Inc. v. Natural Essentials Inc.
Case No. 7:21-CV-04279-KMK
Defendant Natural Essentials Inc.'s Reply to Plaintiff Olympia Sports Company,
Inc.'s Response Letter

Dear Judge Karas:

Plaintiff Natural Essentials has asked the Court to recognize it as the actual plaintiff in the above-captioned action or any consolidated action. (*See* Doc. 26.) Last night, putative declaratory-judgment Plaintiff Olympia Sports Company, Inc. ("Olympia") filed a lengthy letter to preserve a ruling no one cares to challenge. (*See* Doc. 28.) As so often before, Olympia misses the point.

The Ohio Court acted *sua sponte* to identify this action as "first filed." In their briefs in Ohio, providing none of the facts already presented here, both parties had explicitly disavowed reliance on that doctrine. It raised issues that were to be decided, under the precedent of both Circuits, by Your Honor rather than by Judge Adams or Judge Brennan.

In this Court, it no longer matters whether the "first to file" rule governs. All of Olympia's cited law is irrelevant to the pending Motion. Once this Court dismisses Olympia's summons-with-notice, as mandated by Fed. R. Civ. P. 4(m), Olympia will no longer be the plaintiff in the consolidated case.

Nor should it be. Rule 4(m) has no exception for parties who win races to the courthouse. It mandates dismissal to discourage gamesmanship by a plaintiff who initiates an action, but never follows up with an operative pleading — exactly the situation here.

After a year's delay, the venue issue is no longer worth fighting over. But the Rule should be enforced. With its bad-faith delay and its posturing to make the litigation "go[] away" (*see* Doc. 9-11), Olympia has forfeited its status as a plaintiff in this Court. The Court should grant the pending Motion to Dismiss under Rule 4(m), and posture the action appropriately. (*See* Doc. 17.)

We thank the Court for its time and attention to this matter.

Respectfully submitted,

/s/ Laura E. Kogan
Laura E. Kogan, Esq.